

FILED 11 APR 06 15:31 USDC-ORE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

NATHAN DEFFENBAUGH,

09-CV-6347-TC

Plaintiff,

v.

ORDER

LINN COUNTY, and MICHAEL
SCHRAEDER,

Defendants.

COFFIN, Magistrate Judge:

Represented plaintiff asserts several federal and state claims arising from two pretrial detentions in the Linn County jail.

Presently before the court are defendants' motion (#33) for summary judgment and plaintiff's motion (#41) for partial summary judgment. For the reasons stated below and at oral argument, the motions are largely denied and this action will proceed to trial.

Legal Standard

Federal Rule of Civil Procedure 56 allows the granting of summary judgment:

if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c). There must be no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986).

The movant has the initial burden of establishing that no genuine issue of material fact exists or that a material fact essential to the nonmovant's claim is missing. Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986). Once the movant has met its burden, the burden shifts to the nonmovant to produce specific evidence to establish a genuine issue of material fact or to establish the existence of all facts material to the claim. Id.; see also, Bhan v. NME Hosp., Inc., 929 F.2d 1404, 1409 (9th Cir. 1991); Nissan Fire & Marine Ins. Co., Ltd., v. Fritz Cos., Inc., 210 F.3d 1099, 1105 (9th Cir. 2000). In order to meet this burden, the nonmovant "may not rely merely on allegations or denials in its own pleading," but must instead "set out specific facts showing a genuine issue of fact for trial." Fed. R. Civ. P. 56(e).

Material facts which preclude entry of summary judgment are those which, under applicable substantive law, may affect the outcome of the case. Anderson, 477 U.S. at 248. Factual disputes are genuine if they "properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Id. On the other hand, if, after the court has drawn all reasonable inferences in favor of the nonmovant, "the evidence is merely colorable, or is not significantly probative," summary judgment may be granted. Id.

Factual Background

Plaintiff is a double amputee below the knees with most of his fingers amputated as well. He uses a wheelchair, but is also capable of and does move about under his own power. Corrections deputies at the Linn County jail are familiar with plaintiff as he has been booked there over 30 times since 1991. Plaintiff can be a difficult and even combative detainee as evidenced by his pleading guilty to an assault of a corrections deputy who was injured while putting plaintiff in his cell during the first detention at issue in this action.

The first detention arose from an arrest for violation of a restraining order. Plaintiff was placed in a holding cell that had no plumbing fixtures. The toilet consisted of a grate-covered floor drain in the center of the cell which could be flushed remotely by jail staff. During the morning meal preparation, plaintiff screamed that he needed to "take a [bowel movement]" and demanded to be moved to a cell with a regular toilet. Defendant Sergeant Shraeder told plaintiff to calm down and eventually to use the floor toilet with the end result being plaintiff defecating in a corner of the cell and remaining in the cell with the feces for several hours until he was moved to another cell.

Plaintiff was not allowed a wheelchair in the first holding cell, but did have access to a wheelchair during the remainder of his detention which was in a typical cell, not a cell with an ADA compliant toilet or shower.

Plaintiff was eventually released and filed the first complaint in the action presently before the court. He then returned to the Linn County Jail after another arrest. Defendant Shraeder classified plaintiff as a level 1 "High Risk Offender" (HRO), a level higher than his level 2 classification from his previous detention. Unlike his previous detentions, plaintiff was not allowed the use of his wheelchair in his cell for a large part of this detention. He walked on his stubs in his cell and

contends that such caused him bleeding, bursitis and severe pain. He was seen by medical staff who noted dry skin and callouses and that plaintiff wanted his wheelchair, but that it was denied for security reasons. Plaintiff was not lodged in an ADA compliant cell with a wheelchair accessible or ADA compliant toilet or shower, although he was allowed a wheelchair and shower chair when he was allowed a daily brief interval outside his cell.

Discussion

Section 1983 Claims

Plaintiff has brought section 1983 claims asserting that his conditions of confinement constituted cruel and unusual punishment.

To determine whether plaintiff's confinement constituted cruel and unusual punishment, a court must assess whether plaintiff was deprived of the "minimal civilized measure of life's necessities." Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998). Jail officials may not deprive inmates of basic necessities of life such as clothing and sanitation and disabled inmates must be provided with physical accommodations necessary because of their disabilities, including adequate toilet and shower facilities and wheelchairs. Casey v. Lewis, 834 F. Supp. 1569, 1581 (D. Ariz. 1993). If plaintiff's confinement constituted cruel and unusual punishment, a prison official may be held liable if he acted with "deliberate indifference" to a substantial risk of serious harm; mere negligence is not enough to establish liability. Id.

As to plaintiff's first detention, the defendants proffer evidence that defendant Shraeder did not move plaintiff to a cell with a toilet that would work for him because he was too busy with meal preparation and because, based on plaintiff's history and behavior, moving plaintiff would be a

danger and a security risk.¹ Although deference to prison officials' penological justifications can play a part in the deliberate indifference inquiry, the evidence viewed in the light most favorable to plaintiff could support a reasonable inference that defendant Shraeder was deliberately indifferent and punitive towards plaintiff in retaliation for his earlier assault on a deputy by requiring the defecating without an adequate toilet and the housing with the feces for many hours, thereby dehumanizing plaintiff and lessening his dignity. Plaintiff contends that, as a double amputee, he cannot "squat" to use the floor grate and thus soiled himself and that his condition was obvious to Schraeder. He further disputes that Schraeder was precluded by other duties from moving him to a cell with a normal toilet. As there are factual issues on this and other matters arising from this detention, plaintiff's claims will go to a jury.

As to the second detention, there is evidence in the record that plaintiff was assigned a higher security classification than for previous detentions, was not allowed the use of his wheelchair in his cell, and was not lodged in an ADA compliant cell for security reasons. Although deference to prison officials' penological justifications can play a part in the deliberate indifference inquiry, the evidence viewed in the light most favorable to plaintiff could support a reasonable inference that defendant Shraeder was deliberately indifferent and punitive towards plaintiff in retaliation for his earlier assault on a deputy and his filing of this action. As there are factual issues on this and other matters arising from this detention, plaintiff's claims will go to a jury.

Even if there were not manifest factual disputes present, it would be better to proceed to a full trial on the claims because in the circumstances of this case a fuller record will afford a more

¹ Plaintiff has moved to strike certain submissions by defendants. However, the submissions are admissible at this stage of the proceedings to show state of mind and for other reasons set forth by defendants. As such, plaintiff's motion to strike is denied.

substantial basis for decision. See Andersen v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); Anderson v. Hodel, 899 F.2d 766, 770-771 (9th Cir. 1990).

Based on the above, defendant Shraeder's assertion of qualified immunity is denied at this time as there are genuine issues of material fact surrounding the underlying conduct at issue. See generally, Sloman v. Tadlock, 21 F.3d 1462 (9th Cir. 1994).²

ADA and Rehabilitation Act Claims

The parties have filed cross-motions for summary judgment on plaintiff's claims for violation of the ADA and Rehabilitation Act. The motions are denied for reasons discussed in the previous section. Although deference to prison officials' penological justifications can play a part in the deliberate indifference and reasonableness of accommodation inquiry, there are numerous factual issues present that must be decided by a jury. Even if there were not manifest factual disputes present, it would be better to proceed to a full trial on the claims because in the circumstances of this case a fuller record will afford a more substantial basis for decision. See Andersen v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); Anderson v. Hodel, 899 F.2d 766, 770-771 (9th Cir. 1990).

This court also notes that the record indicates that the jail's only ADA cells are in cell blocks housing vulnerable inmates and that such may result in all disabled HROs not having access to ADA

²Defendant County's Monell argument also fails at this point in the proceedings as the record has some evidence indicating inadequate training for jail employees in the handling of inmates with disabilities and in possibly having policies and procedures that may improperly result in disabled inmates classified as HROs not having access to ADA cells. Defendants' other argument that the Prison Litigation Reform Act bars all of plaintiff's claims is not persuasive and plaintiff's motion for summary judgment on this affirmative defense is granted as plaintiff was not a prisoner at the time this action was filed, plaintiff had injuries to his stumps, and plaintiff's complaints were nongrievable issues at the jail, thereby making grieving them futile.

cells, as plaintiff's security classification is cited as the basis for not placing him in an ADA cell. To say the least, this is troubling in light of the mandates of the ADA.

First Amendment Retaliation Claim

Plaintiff claims that defendant Shraeder retaliated against him for filing this action by giving plaintiff a high security classification and denying him use of his wheelchair during his second detention. Summary judgment is precluded on this claim as there are factual issues as to whether Shraeder's actions were taken in retaliation or to advance a legitimate correctional goal. Even if there were not manifest factual disputes present, it would be better to proceed to a full trial on the claims because in the circumstances of this case a fuller record will afford a more substantial basis for decision. See Andersen v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); Anderson v. Hodel, 899 F.2d 766, 770-771 (9th Cir. 1990).

State Claims

Plaintiff concedes his intentional infliction of emotional distress claim and it is dismissed.

Plaintiff's Abuse of a Vulnerable Person Act claims are dismissed. The claim is barred under ORS 30.650 as plaintiff has no economic damages and was an inmate when the alleged claims arose.

Conclusion

Defendants' motion (#33) for summary judgment is allowed to the extent plaintiff's claim for intentional infliction of emotional distress is dismissed and plaintiff's Abuse of a Vulnerable Person claims are dismissed . The remainder of the motion is denied.

Plaintiff's motion (#41) for partial summary judgment is allowed to the extent that defendants' affirmative defenses regarding the Prisoner Litigation Reform Act and failure to exhaust administrative remedies/statute of limitations are dismissed. The remainder of the motion is denied.

This action will proceed to trial.

DATED this 6th day of April, 2011 .



THOMAS M. COFEIN
United States Magistrate Judge